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CHAPTER EIGHT

LOCAL AGENCY ACQUISITION

8-1 LOCAL AGENCY ACQUISITION POLICY

8-1.01 Partnering with Municipalities

Citizens of the State and the community benefit when local officials acquire right of way under agreement with the Maine Department of Transportation. Local officials know the needs and concerns of citizens. Property owners in the path of highway development are more likely to amicably settle property acquisition claims on the basis of fair market value when they are approached by officials they know, who share the same community interests. This enables highway projects to be completed expeditiously and at reasonable cost. It also results in a high degree of citizen satisfaction with the right of way process and the completed project.

Private ownership of property is a basic American right that is protected by the United States and the Maine Constitutions. The taking of property is constitutionally conditioned on public necessity and on payment of just compensation for property that is acquired for a public need. Federal and State legislative enactments provide additional citizen protections and rights. These control the process by which property is acquired and are intended to insure that persons who are affected by acquisition are not disproportionately injured by projects that are intended to benefit the public as a whole.

The Maine Department of Transportation (MaineDOT) assists municipalities to acquire real property that is needed for highway projects in compliance with Federal and Maine law. This Chapter sets forth basic requirements of law and State policy. It describes and explains the critical steps in the property acquisition process. The objective is to enable local officials to proceed with confidence that they are conforming to all requirements of the law, reducing the amount of time devoted to the research and study of procedures and rules.

This Chapter does not address unique or complex situations. Right of way acquisition is a human endeavor. Circumstances will arise that are not addressed by this brief coverage and that may be outside the experience of officials charged with this function. To address this situation, MaineDOT assigns a liaison representative to advise and consult on project right of way issues and problems. The assigned MaineDOT staff will have varied statewide experience and will provide practical advice that conforms to applicable law and regulations. In addition, the MaineDOT representative will strive for program consistency so that citizens are treated fairly and equitably, without regard to the part of the State they live in or the nature of their occupancy or type of acquisition.

8-1.02 Administration

Local Agency projects are administered by the Local Project Administration Unit in the Contracts Procurement Office. Projects that will be developed and delivered locally are identified early in

the in the work plan development process. Generally, MaineDOT support and guidance will be provided a Project Development Program Unit. For example, if the local project is a bridge project, support would come from the Bridge Program. The Project Manager administering projects in the Bridge Program in the Region where the local project is situated would be the Project Manager and the Senior Property Officer working in that Region would be the Right of Way liaison for the Department. In the event a local project is administered by a unit without Right of Way resources, then the Project Manager should arrange with the Property Office for resources.

8-1.03 MaineDOT Services

The Department will perform the following activities with regard to locally administered right of way acquisition projects:

1. Insure that the project is on the MaineDOT Work Plan and that Federal funding is committed, if applicable.
2. Consult with local officials to identify the scope, schedule and cost of right of way acquisition.
3. Prepare an agreement in consultation with local officials defining the State/local project responsibilities.
4. Provide current and continuing advice on the application of State and Federal laws and regulations concerning right of way acquisition to specific project and parcel problems and situations.
5. Provide revisions and updates to regulations, policies, procedures and guidance material.
6. Provide training to local staff that are or will be engaged in right of way acquisition. Training is normally delivered through an agreement with professional organizations including the National Highway Institute, the International Right of Way Association or the American Association of State Highway and Transportation Officials.
7. Monitor the performance of right of way activity in conformity with MaineDOT's Quality Assurance/Quality Control Program. See Chapter 10 for further detail.
8. Provide referrals of qualified and experienced private service providers in right of way functions, including appraisal, negotiations, relocation, legal services and title work.
9. Provide reimbursement for eligible costs based on supported claims that are submitted by the local jurisdiction.

The assigned MaineDOT Senior Property Officer will perform many of the above services. The municipality shall maintain continuing contact with the representative through the property

acquisition phase of the project. Normally, the Senior Property Officer will meet with the responsible municipal officials at an early stage in the project to review policy questions and the project schedule and to discuss any critical or complex cases.

Although the municipality will assume responsibility to acquire property in compliance with all applicable State and Federal laws, regulations and policy, it is the Department's ultimate responsibility to insure that the acquisition is being accomplished as required. Coordination between the Department and the local agency can be an essential element in providing that assurance. The Senior Property Officer assigned to the project will closely monitor the acquisition activities of the agency on a regular and ongoing basis.

8-1.04 MaineDOT/Municipality Agreement

A formal agreement defining the roles and responsibilities of the municipality and the Department will be executed for every project on which a municipality will assume responsibility. This is a comprehensive agreement covering all phases of work, including right of way. The agreement will normally provide for complete assumption by the municipality of all right of way acquisition responsibility. However, specific activities may be reserved for MaineDOT performance. This may include the relocation of residents who will be displaced as a result of acquisition. Any municipality opting to acquire right of way as part of project administration will follow the requirements of the Uniform Act and the procedures outlined in this Manual.

The agreement will state that the standard of performance for right of way work will meet the requirements of the ***Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*** (as amended)(***Uniform Act***). This Chapter sets forth the basic and minimum requirements of the ***Uniform Act*** for the acquisition of property where no relocation is involved.

The MaineDOT/Municipality Agreement is an open-draft document that is intended to address the circumstances of specific projects. MaineDOT staff will consult with local officials in advance concerning the scope and content of the agreement so that it is relevant to the project and meets the needs of both parties.

8-1.05 Applicable Laws and Regulations

The local agency performing property acquisition is subject to the same laws and regulations as if MaineDOT were the acquiring agency. Following is a brief summary of the legal authorities that control the acquisition of real property for right of way:

1. U.S. and Maine Constitutions. Both require public necessity and payment of just compensation for the taking of private property. Additionally, the U.S. Constitution requires due process when States acquire privately owned property.
2. ***The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*** (amended 1987). The ***Uniform Act*** is landmark Federal legislation that applies to all property acquisition for Federal or Federally-funded projects. States,

including Maine, have enacted legislation that enables compliance with the Federal law. Maine, through State law, has extended its provisions to State-funded projects.

The **Uniform Act** extends a system of rights and protections to property owners, with corresponding obligations for acquiring agencies. It sets forth a process for establishing value (just compensation) and negotiating with owners to encourage amicable settlements, thereby minimizing having to resort to the courts for condemnation. An important part of the **Uniform Act** provides a system of protections and benefits to persons who are displaced as a result of public projects. The procedural provisions described in this Chapter arise from the requirements of the **Uniform Act**.

3. 23 CFR 710. The **Code of Federal Regulations (CFR)** provides interpretive detail to Federal law and carries the full force and effect of Federal law. The above regulatory reference pertains to real property acquisition policy for highways.
4. 49 CFR 24. This is the Federal regulation that sets forth policy in implementing the relocation provisions of the **Uniform Act**.
5. Title 23 MRSA Part 1. State Highway law contains provisions at Sections 61, 63, 73 through 246, 652 and 653 pertaining to the acquisition of real property and the relocation of displaced persons. Municipalities acquire property under authority of Title 23 Part 3, Chapter 304 (see below). However, this Chapter refers back to Sections 154 through 154E in Part I for purposes of determining damages to real property.
6. Title 23 MRSA Part 3 Chapter 304. This is the Maine Revised Statute pertaining to local highway law. Chapter 304 defines the acquisition of property for highway purposes.

The Maine Statutes referenced above are fully conforming to the detailed provisions of the **Uniform Act** and the implementing regulations in 23 **CFR** 710 and 49 **CFR** 24.

8-1.06 Transfer of Title to the State of Maine

When a municipality acquires fee title and/or easements on a State or State-aid road, title to the facility will be transferred to the State of Maine when the project is complete. The process for the transfer will be determined in consultation with the Project Development Bureau's Property Office.

8-1.07 Quality Assurance

The Department is committed to continuously improve the quality, efficiency and effectiveness of its programs and services. In partnering with MaineDOT, a municipality or local agency assumes a role in quality assurance. MaineDOT's concept of quality is based on the premise that every person involved in the process at any level has a responsibility for advancing quality.

Quality advancement is a responsibility of each employee. It is not exclusively a management, supervisory or audit function. The following activities are appropriate quality advancement measures that can be undertaken by the municipality performing real property acquisition:

1. Perform a second-party internal review of all documents before they are delivered to the property owner. This includes appraisals, agreements, and instruments of conveyance, offer letters, etc.
2. Provide relevant training to agency personnel who are engaged in specialized right of way activity (e.g., appraisal, negotiations, titles, relocation).
3. Perform quality spot checks of completed work concurrent with any ongoing project acquisition activity.
4. Perform peer reviews of work activity when there is more than 1 staff person involved in property acquisition for right of way.
5. Conduct phone or mail surveys of property owners following acquisition.
6. Develop internal procedures or policy to apply to specific recurring situations or circumstances in order to insure consistency and equitable treatment.
7. Perform joint project reviews between MaineDOT and local agency management staff.

The above are examples, but not an exhaustive list, of quality assurance actions. Other measures may be appropriate and effective depending on agency staffing, organization and the project. Specific quality assurance measures may be suggested by MaineDOT and incorporated into the MaineDOT/Municipality Agreement.

The agency quality assurance activities do not replace audits and reviews that are performed by State, Federal or local audit authorities. The Department has responsibility under 23 **CFR** 710.203(c) to monitor property acquisition activities conducted by political subdivisions to ascertain that right of way is acquired in accordance with the provisions of State and Federal laws and as required by Federal Highway Administration directives.

8-2 ACQUISITION PROCESS REQUIREMENTS

The procedural items discussed in this Section are basic requirements of the ***Uniform Act*** in the process of acquiring real property for highway right of way. They are presented with minimum detail in order to afford flexibility to municipalities to adapt their process to their organization structure and the nature of the project. Additional information can be secured from the other chapters of this *Manual* that pertain to individual acquisition functions. Also, information and advice will be available from the Senior Property Officers and Property Office.

8-2.01 Title Investigation and Certification

Title investigations and certifications may be performed by municipality legal staff, or may be contracted to private attorneys.

Municipalities will follow the standards established by the Maine State Bar Association for title examinations, including treatment of clouds or defects in title. Exceptions to these standards will be acceptable only on approval of the MaineDOT Office of Legal Services.

As soon as the right of way acquisition needs are identified for a project, acquisition to date titles will be prepared for all properties from which either permanent or temporary rights will be acquired. This work will enable detailed plotting of property lines and ownership information on plans.

Detailed guidance on title examinations for highway acquisition, including length of title search history for different types of takings is provided in Chapter 2. Section 2-4.03 provides guidelines for handling clearance of mortgages and other liens on property. On property acquired by deed, liens will be extinguished by securing releases, or the lien holder will named as payee on the check for settlement in accord with criteria for different types of acquisitions defined in Section 2-4.03.

A final rundown of title will be performed on all acquisitions immediately prior to recording the acquisition documents. The municipality will secure an attorney's certification that the municipality has secured the required necessary rights to construct the project as designed, and that all applicable Federal and State requirements governing these acquisitions are satisfied. A final project certification will be made using the format of the MaineDOT Certification statement referenced in Chapter 1, Section 2.02(b).

8-2.02 Right of Way Mapping

The function of right of way mapping includes gathering and managing real property information and highway system information, and preparing the right of way plans and acquisition documents necessary to acquire property for highway projects. This section provides a brief overview of the mapping function. Detailed requirements for mapping are contained in Chapter 2.

The initial step in mapping is gathering data on ownership and improvements on each parcel of land the project is likely to affect. Mapping personnel then determine property rights underlying the existing or proposed transportation facility. Mappers will translate the information into preliminary right of way maps that show the existing limit of the right of way or other MaineDOT ownership. Mappers later prepare final right of way plans that document the new right of way limits of the project, basic design features including entrances and slopes, and the areas and types of acquisitions needed for the project. The final right of way plan serves as the basis for the parcel descriptions included in the property acquisition documents. A municipality will need to provide maps and property plats for the condemnation cases.

Municipalities may contract for performance of mapping functions. Guidance for the mapping process is contained in Chapter 2. The MaineDOT Property Office unit can provide detailed advice on mapping specifications or questions on specific project situations.

8-2.03 Determination of Just Compensation

Just Compensation is the measurement of damages resulting from a taking under power of eminent domain. The agency's estimate of just compensation is determined by means of real estate appraisals, which are independently reviewed by a qualified review appraiser, or MaineDOT approved waiver valuation procedure.

The Just Compensation determination is typically made by an authorized official within the acquiring agency. MaineDOT recommends that on municipal acquisitions the official determining Just Compensation be the highest ranking administrative officer in the municipality, typically the Manager or First Selectperson.

Independent contract appraisers in Maine are certified or licensed by the Maine Department of Professional and Financial Regulation. MaineDOT maintains an Appraisal Register, which is a current listing of consultant appraisers who are properly licensed or certified and are otherwise qualified by experience and performance to appraise property to be acquired for highway right of way. MaineDOT recommends that a municipality contract with an appraiser on the Appraisal Register.

When using an independent appraiser, consider the following:

1. Information Provided to the Appraiser. It is critical that the appraiser be provided with sufficient information to value the property rights to be acquired. The following should be provided:
 - a. Name, address and phone numbers of the owner(s);
 - b. Preliminary title information indicating current ownership and recent sales;
 - c. Description of the property rights to be appraised; and scope of work.
 - d. Plan sheet indicating property lines and taking, including grade changes and mitigation measures (e.g., driveway restorations or landscaping).
2. Provide Owner the Opportunity to Accompany Appraiser. The appraiser must provide an opportunity to the property owner to accompany the appraiser in an

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- inspection of the property. This is a basic requirement of the ***Uniform Act*** and cannot be waived. The appraiser should document efforts to contact the owner as well as provide the owner's response to the offer to accompany the appraiser.
3. Appraisal Format and Number of Appraisals. When developing the appraisal, consider the following:
- a. The Department uses a Short Format Appraisal to value property when there are no damages or special benefits to the remainder and the highest and best use of the remaining property is not changed. This is discussed in Section 4-2.04.
 - b. The Department may waive a formal appraisal of uncomplicated acquisitions where the value of the taking does not exceed \$10,000. In this instance, just compensation is determined by a qualified person, not necessarily an appraiser, through a simplified valuation process based on direct comparison with available market sales information. In order for an assessor to be deemed qualified, they must be either a Certified Maine Assessor or a Certified Assessment Technician. This process is fully described in Chapter 3. It should be noted that the administrative acquisition process is used only when settlement can be reached on this basis after explaining the process to the owner.
 - c. Some acquisitions will require more than one appraisal to be performed. Circumstances for a second appraisal include the property or the acquisition being of high value or uncertainty existing about the highest and best use of the property either before or after the acquisition.
 - d. Before executing an agreement, the assigned Senior Property Officer will review the expected property acquisitions with local officials and jointly agree as to the proper appraisal format to be used and acquisitions in which more than 1 appraisal is appropriate.
4. Appraisal Review to Determine Value. The fair market value offer that will be presented to the property owner as just compensation is determined by a formal review of the appraisal(s) secured for the property. The appraisal review function may be performed by a qualified agency representative or by a licensed or certified contract appraiser who is not associated with the person who performed the appraisals. The appraisal review will include a check of the factual information and computations in the appraisal. It will also conclude to a fair market value for the acquisition based on an evaluation of support and reasonableness of the appraisal value conclusion. The review appraiser is responsible to secure any needed appraisal corrections or additional documentation. The appraisal review process is discussed in Section 4-5.

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5. Approval of the Appraisal: After the review is completed, the appraisals will be approved at the MaineDOT by the Senior Property Officer overseeing the right of way phase of the project.
 6. Written Statement of and Basis for Amount Established as Just Compensation. A written offer of fair market value must be prepared for presentation to the owner, accompanied by a summary statement of the basis for the amount the agency has established as just compensation. The summary must provide the following information to enable the owner to make a reasonable judgment concerning the amount of the offer:
 - a. A description and location identification of the real property and the interest in the real property being acquired;
 - b. Identification of buildings, structures and other improvements, including removable building equipment and trade fixtures, considered to be part of the real property to be acquired; and
 - c. The amount established as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and for damages to the remaining property must be stated separately.

8-2.04 Negotiations with the Owner

Agencies that acquire private property for public projects are aware of the need to be sensitive to property owner concerns as well as their rights under the Maine and the U.S. Constitution and laws. Most owners are willing sellers. However, the process is involuntary in that the owner does not have the option not to sell. Therefore, it is important to negotiate for acquisition with a high degree of preparation, knowledge about the public need (i.e., the project) and professionalism in contacts with owners. Before negotiations can begin, the municipality **must ensure that the NEPA process is complete** and that the appropriate documentations are in place. Failure to complete this step and initiating negotiations prior to NEPA complete will jeopardize federal participation in the project. The Municipality should check with the MaineDOT liaison to insure NEPA Complete before proceeding.

The agency representative should present the written offer of fair market value in person, explain the project and the need for acquisition, and address any owner questions about the offer and the valuation process. In addition, the representative should discuss the project schedule and any effects of the acquisition or the project on remaining property. Sufficient time should be provided to the owner to consider the offer and to consult with others concerning the acquisition and the reasonableness of the offer. This may require follow-up contacts. The agency has a responsibility to make every effort to acquire property expeditiously by negotiations.

The agency-determined fair market value is the basis for negotiations, but the offer should not be considered a “take it or leave it” alternative. Information provided by the owner may be

cause to revise the offer, for instance, if an important element of value were omitted from the appraisal or the acquisition was not properly described in the appraisal. Also, the agency has authority to administratively increase the offer amount if this would promote a settlement that would be in the overall public interest. Reasons for administrative settlement need not be based on valuation, but might consider other factors including condemnation costs, need for expeditious settlement or the risk of a court award that is significantly greater than the agency determination of value.

Any administrative settlement offer amount that is above the established fair market value must be fully explained in the file by the authorizing official, with an explanation as to how the offer is in the public interest. All negotiations contacts with owners should be documented on a diary log that states the date of contact, the parties contacted and a summary of the discussion.

Chapter 5 provides a more detailed discussion of the negotiations process.

8-2.05 Tenant-Owned Improvements

The property acquired may include buildings, structures or other real property improvements that are owned by a tenant rather than the landowner. The tenant may have a lease that specifies that improvements be removed at termination of the lease. Tenant-owned improvements are more likely to be encountered on commercial use property. Examples include trade fixtures in a retail store or a panelized walk-in cooler for a restaurant. A tenant-owned improvement on a residential property might be an outbuilding (e.g., a storage shed) or a swimming pool.

Property that would be considered real property if it is owned by the landowner is also considered real property for acquisition purposes. The agency must acquire interest in tenant-owned improvements that are located on property that is acquired for the project. A separate offer of the value of the improvements must be made to the tenant owner, but only if the landowner first disclaims any interest in the improvements. If the landowner refuses to disclaim interest, the tenant is advised of this fact. The acquisition payment to the landowner will include the value of the improvements. Disputed ownership will then be a matter to be resolved between the landowner and the tenant.

The value of tenant-owned improvements will be determined as the greater of the amount that the improvement contributes to the fair market value of the whole property, or the value for removal, which is the same as salvage value.

8-2.06 Uneconomic Remnants

An uneconomic remnant is a remainder property after acquisition that the acquiring agency determines has little or no utility or value to the owner. The ***Uniform Act*** requires that the agency offer to purchase uneconomic remnants. This requirement is based on the reasoning that an owner should not be burdened by having to maintain and incur taxes and other costs for a property remnant that is created by the public taking that is of no value or use to the owner. The decision to sell the uneconomic remnant is voluntary on the part of the owner.

8-2.07 Donations

The acquiring agency may accept donation of the property or any part of the compensation that would be due to the owner for the acquisition. However, in accepting a donation, the agency must inform the owner of the right to have the agency appraise the property and be offered full fair market value. If the motivation for donation is a tax reduction, the owner should be advised that the Internal Revenue Service requires an independent third-party appraisal to support any deduction from taxes. The agency may, at its election, reimburse the owner's cost for an appraisal. The selection of an appraiser and compliance with tax law requirements is the property owner's responsibility.

It is important that the agency not take any action that could be perceived as coercive of the owner to donate property. An example of a coercive act would be to tell an owner: "All your neighbors have agreed to donate. They are going to be unhappy to know this project is delayed because of your refusal to donate".

8-2.08 Exercise of Eminent Domain

The municipality acquiring real property should make every reasonable effort to settle amicably by negotiations as described above. If municipal officials determine after sufficient contacts that settlement based on negotiations is not feasible, and the project schedule requires immediate taking of property interests, title should be acquired by filing a condemnation order in the manner specified in 23 **MRSA** Chapter 304, Section 3023. The municipality will issue a check in the full amount of determined damages, fair market value, for delivery with the service of record copy of the condemnation order. Service on any one of multiple owners will be considered service on all owners. Title will pass to the municipality on service of the order of condemnation and check, or recordation of the deed or certificate as specified in 23 **MRSA** Section 3024, whichever occurs first.

A property owner who is not satisfied with the determination of damages that are awarded in the process of eminent domain as described above may appeal to the State Supreme Court in the county where the property lies. The owner's appeal to the Superior Court must be made within 60 days after the day of taking as specified in 23 **MRSA** Section 3029.

8-2.09 Payment for Property Before Being Required to Surrender Possession

The **Uniform Act** requires that no owner be required to surrender possession of real property before the acquiring agency pays the agreed purchase price. This requirement is served in condemnation by the process described in Section 8-2.08. In negotiated settlement, the municipality will deliver a payment check to the owner in the full amount of the agreed settlement before the agency takes physical possession of the property or requires the owner to vacate the property.

8-2.10 Payment for Expenses Incidental to the Transfer of Title

The acquiring municipality will pay actual and reasonable costs of transferring the title to the acquired property, including:

1. Recording fees, transfer taxes and similar expenses, if any, that are incidental to conveying the property to the municipality;
2. Penalty costs for prepayment of any preexisting recorded mortgage encumbering the real property; and
3. The pro rata share of real property taxes paid by the owner for the period after the date of vesting title or the effective date of possession of the property, whichever is earlier.

8-2.11 Written Advance Notice to Vacate Occupied Property

No person who is lawfully occupying real property will be required to move from a dwelling or to move a business or farm operation without at least 90 days' written notice from the acquiring agency of the date by which the move is required. The occupant should have a reasonable length of time to find other adequate facilities (e.g., housing or replacement business site) and to effect an orderly relocation.

The timing, content and delivery of a notice to vacate are determined by the Relocation Program procedures. If issuance of a formal notice to vacate is required, the municipality should consult with the MaineDOT liaison representative to insure that the notice complies with all regulatory requirements.

Less than 90 days' advance written notice is permitted if continued occupancy of the property would constitute a danger to the person's health or safety. The determination and circumstances must be included in the project files.

8-2.12 Relocation of Residents or Businesses

The municipality may pay for the relocation of minor personal property items from the acquisition area to remaining property as a direct reimbursement claim based on the owner's actual and reasonable cost.

The relocation of residences, businesses or farms must be undertaken in strict compliance with Title 3 of the ***Uniform Act*** and Chapter 6 of this *Manual*. Relocation is a highly specialized activity. MaineDOT recommends that the municipality consult with the assigned Senior Property Officer at the earliest time that a possible residential or business displacement is identified. The circumstances will be reviewed and determination made as to whether the relocation function will be performed by the municipality, contracted to a qualified private party or performed by MaineDOT staff.

It is important to know that property acquisitions that involve relocation will require significantly greater lead time than those acquisitions involving land only. There is an absolute requirement to make comparable replacement housing available to each displaced person or household and to provide at least 90 days' notice after a displacee is advised of the availability of replacement housing. The agency must schedule the project to accommodate the relocation time requirements.

8-3 PROPERTY MANAGEMENT

The municipality is responsible for maintenance, security and management of acquired land improvements after acquisition. This includes the following items:

1. Rodent Control. Properties should be inspected after acquisition for rodents and other hazardous conditions. If rodent infestations are found, the municipality must take removal actions to preclude migration to nearby properties. This should be performed before the demolition of any improvements.
2. Hazardous Substances. Buildings containing asbestos or other hazardous materials must be demolished in compliance with State and Federal criteria for these conditions. See Chapter 7 for further information.
3. Security and Safety. The municipality is responsible to maintain safe conditions at acquired sites. This includes preventing blighting influences to adjacent property by removing accumulations of trash and taking measures to control vandalism and dumping. Buildings should be secured appropriately, including boarding or fencing if necessary. Particular attention must be given to removing conditions that could attract and be hazardous to children.
4. Demolition or Removal of Structures. Structures may be sold for removal from the site or be demolished. If structures are sold, the municipality must use a fair and open process for selecting a buyer, require a cash security deposit or bond to guarantee performance, and require insurance to indemnify the municipality and the State from any liability.

The municipality may demolish structures with its own forces or contract for demolition prior to construction, or removal may be included as a work item in the highway construction contract.

The owner of acquired land may retain ownership of structures for removal to remaining property. This should be arranged during the negotiations for the property, with appropriate adjustment to the fair market value to reflect the retention value of the structures.

5. Rental of Acquired Property. Normally, the construction schedule will preclude the rental of acquired property prior to project construction. If the project is delayed or property is acquired significantly in advance of project need, the municipality may allow occupancy for public or private use. If rented, the amount charged may not exceed what is appropriate for short-term occupancy in the area. The rental or use and occupancy agreement should specify that occupancy after agency acquisition does not create any right or obligation by the municipality or MaineDOT for relocation benefits of any kind.

Any revenues that are generated from the rental of property or the sale of improvements will be applied to reduce the net cost of the project.

8-4 PARCEL AND PROJECT RECORDS AND REPORTS

8-4.01 Parcel and Project Files

The acquiring agency will keep a separate file for each real property acquisition and a file for the right of way project as a whole. The records will be sufficient to demonstrate compliance with applicable laws and regulations. The following will be included in the parcel and project files:

1. Right of way map or plan showing the right of way acquired, including parcel numbers property lines, area acquired and structure improvements and fences;
2. Project plans and property plats, sketches or descriptions;
3. Property ownership information, including title reports;
4. Appraisal Reports and related assignment and contract documents;
5. Statement of determination of fair market value;
6. Offer letters to property owners;
7. Negotiations logs or contact sheets;
8. Correspondence with property owners and MaineDOT;
9. Settlement agreements and contracts and justifications for administrative settlements;
10. Condemnation documents and filings;
11. Credits for sale or rental of property; and
12. Documents relating to property management or the rental or sale of property and structures.

8-4.02 Project Summary Records

Project summary data should be maintained as agreed in consultation with MaineDOT for each project. This may include a summary sheet showing key dates for each parcel, indicating the following:

1. Appraisal assignment,
2. Date the appraisal was received,
3. Date and amount of the fair market value that was established,

4. Date a written offer was presented to the owner and negotiations were initiated,
5. Date and amount of the settlement,
6. Date condemnation was filed,
7. Date the title was transferred,
8. Costs of excess land and any uneconomic remnants acquired,
9. Incidental expenses by parcel, and
10. Cost of construction items performed for mitigation of damages.

The specific project summary data will vary with the type of project and character of work to be performed. Projects with relocation may require a different data set.

MaineDOT and the municipality are subject to audit by State authorities, the FHWA and the U.S. Department of Transportation. Beyond the information noted above, sufficient documentation should be retained in files to track the origin and basis for any costs that are charged to the project as specified in 49 **CFR** Section 18.42.

The Department provides summary information on acquisition and relocation annually to the FHWA in order to carry out national program reporting responsibilities. The municipality will provide contributing information on projects under its responsibility.

8-4.03 Acquisition Policy Resources

The following Right of Way Program information resources will be provided to the municipality on initial assignment of responsibility for right of way project acquisition:

1. The MaineDOT *Right of Way Manual*;
2. The FHWA ***Real Estate Acquisition Guide for Public Agencies***;
3. ***Maine Revised Statutes*** Annotated, ***MRSA*** Title 23;
4. U.S. ***Code of Federal Regulations***, 23 ***CFR*** 710–712, and 49 ***CFR*** 24; and
5. Policy memoranda and guidance issued by MaineDOT and the FHWA.

8-4.04 Confidentiality and Retention of Records

The municipality should insure that all parcel and project files relating to appraisals and negotiations are secure and that only those persons qualified to access the files are allowed to view them. These records are not available for public information except as noted below and their integrity should be carefully maintained. Access to confidential records should be restricted to officials of the municipality, MaineDOT, the State Auditor and the Federal Highway Administration. Because these data provide the documented support for the establishment and payment of just compensation required by law, they should be secured in a safe area with

backup records developed as considered necessary. This is especially important if the data are maintained in computerized form.

Project and parcel records relating to appraisals and negotiations will be open to public inspection 9 months following the completion date of the project. Records relating to claims appealed to the Superior Court will be open to public inspection following the award of the Court.

Notwithstanding public availability of appraisals and negotiations records above, parcel records may contain information of a personal nature relating to claimant income, assets, tax information etc. This information may be protected from disclosure under privacy laws. Officials should consult the local agency or MaineDOT Chief Legal Counsel before making records available.

The municipality will retain records in accordance with the MaineDOT records retention policy as provided in the MaineDOT/Municipality Agreement.

